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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 15 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. <u>93-53</u>
KR PARTNERS)	File No. BPH-911001MB
KES COMMUNICATIONS, INC.)	File No. BPH-911003MH
LORI LYNN FORBES)	File No. BPH-911004MH
For Construction Permit for a)	
New FM Station on Channel 256C)	
in Waimea, Hawaii)	

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

STATEMENT FOR THE RECORD

KES Communications, Inc. ("KES"), by Counsel, hereby submits this "Statement For The Record" with respect to the facts and circumstances surrounding the withdrawal of its 25 March 1993 "Petition to Enlarge Issues Against KR Partners," and, in particular, in response to the Mass Media Bureau's "Opposition to Petition to Enlarge Issues," filed 12 April 1993.

In its opposition pleading, the Mass Media Bureau states that "KES should be admonished for submitting such a frivolous pleading and wasting the time of all involved." See, *Mass Media Bureau's Opposition* at para. 6. (wherein the Bureau also cites Section 1.52 of the Commission's Rules, inferring that counsel for KES proceeded in bad faith).

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Yesterday KES and KR Partners filed a joint motion to withdraw KES's petition to enlarge issues against KR Partners. At the time the joint motion was prepared, neither KES nor KR Partners had received a copy of the Bureau's opposition comments. And, although the joint motion briefly summarizes the facts and circumstances surrounding KES's decision to file the petition to enlarge issues against KR Partners, further comment is now warranted in view of the allegations raised against KES in the Bureau's opposition comments.

When present counsel was retained by KES to prosecute its application through the comparative hearing, counsel received some files from both prior counsel and KES's consulting engineer. The consulting engineer advised counsel that KR Partners filed a defective environmental exhibit, since both its originally filed application and amended application referred to a transmitting site in the State of Maine, not Hawaii. Since counsel was perplexed as to how such a defective exhibit could pass through the scrutiny of the "hard look" processing guidelines, counsel visited the FCC Public Reference Room to inspect the KR Partners application file.

Counsel visited the Public Reference Room five or six times to view all of the Waimea application files. At first, the staff could not find any of the applications since the "paper copies" were being transferred to the RIPS microfiche system. Sometime just prior to March 25, 1993, the staff found the paper copies of the applications, which had not yet been

transferred to microfiche. Counsel was given permission to inspect and photocopy these files. However, the paper files were in disarray. For example, the amendment that Julie O'Connor filed on the cut-off date (to switch from an individual applicant to the KR Partners partnership) was nowhere to be found./¹ The original application filed by Julie O'Conner on October 1, 1991 was found to be extremely out of order, as was the amended application filed one day later. Nevertheless, counsel's inspection of the file seemed to reveal that a defective environmental statement was filed both on October 1, 1991, and also on October 2, 1991. Thus, based upon counsel's inspection of the FCC files as well as the information previously supplied to counsel by KES's engineering consultant, KES made a reasonable, good faith determination that the KR Partners application did not contain a proper environmental showing.

Yesterday counsel for KES and KR Partners discussed these matters, at which time KES learned that KR Partners original

previously taken to investigate these matters. Hopefully the Bureau would have viewed KES's actions differently if it had known of all the circumstances and events noted above. In any event, KES cannot sit idly by when accused of ignoring or violating a Commission Rule. Thus, for the Record, KES believes that the submission of this Statement is warranted./²

Respectfully submitted,

KES COMMUNICATIONS, INC.

Meyer Faller Weisman

By: 

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 15th day of April, 1993, I have served a copy of the foregoing "Statement for the Record" first-class, postage-prepaid, on the following:

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*denotes Delivery By Hand